



New York State Board for Professional Medical Conduct

433 River Street, Suite 303 Troy, New York 12180-2299 • (518) 402-0863

Barbara A. DeBuono, M.D., M.P.H.
Commissioner of Health

Patrick F. Carone, M.D., M.P.H.
Chair
Ansel R. Marks, M.D., J.D.
Executive Secretary

July 28, 1998

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Abayomi Orafidiya, M.D.
4 Rella Drive
New City, New York 10956

RE: License No. 160583

Dear Dr. Orafidiya:

Enclosed please find Order #BPMC 98-153 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect **July 28, 1998**.

If the penalty imposed by the Order is a surrender, revocation or suspension of this license, you are required to deliver to the Board the license and registration within five (5) days of receipt of the Order.

Board for Professional Medical Conduct
New York State Department of Health
Hedley Park Place, Suite 303
433 River Street
Troy, New York 12180

Sincerely,

Ansel R. Marks, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Sharif Mahdavian, Esq.
Wilfred T. Friedman, Esq.
36 West 44th Street
Suite 1205
New York, New York 10036

Cindy M. Fascia, Esq.

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
ABAYOMI ORAFIDIYA, M.D.

CONSENT
AGREEMENT
AND
ORDER
BPMC #98-153

STATE OF NEW YORK)
COUNTY OF *New York*) ss.:

ABAYOMI ORAFIDIYA, M.D., being duly sworn, deposes and says:

On or about October 22, 1994, I was licensed to practice medicine as a physician in the State of New York having been issued License No. 160583 by the New York State Education Department.

My current address is 4 Rella Drive, New City, New York 10956, and I will advise the Director of the Office of Professional Medical Conduct of any change of my address.

I understand that I am charged with six specifications of professional misconduct as set forth in the Statement of Charges, annexed hereto, made a part hereof, and marked as Exhibit A.

I do not contest the charges against me, and I hereby agree to the following penalty:

My license to practice medicine in the State of New York shall be suspended wholly and indefinitely, until the State Board for Professional Medical Conduct, in its reasonable discretion and as set forth further herein, shall determine to stay said suspension.

I shall be permitted, upon compliance with all conditions, to petition the State Board for Professional Medical Conduct for a Modification Order, staying such suspension and permitting me to practice medicine under whatever limitation(s), term(s) of probation, or further conditions the Board may deem appropriate in its reasonable discretion, such discretion to be exercised by a Committee on Professional Conduct, after I have met a burden of proof and persuasion in a proceeding as set forth in this Consent Order and Exhibit B. I understand and agree that the Committee's exercise of such discretion shall not be reviewable through recourse to the Administrative Review Board.

I shall be subject to the following Condition, which I hereby stipulate and agree may be imposed pursuant to §230 of the Public Health Law:

Except during periods of actual suspension, I shall maintain current registration of my license with the New York State Education Department Division of Professional Licensing Services, and pay all registration fees. This condition shall be in effect beginning thirty days after the effective date of the Consent Order and continuing until the full term of the Order has run, and until any associated period of probation and all probation terms have been completed and satisfied. I hereby stipulate that any failure by me to comply with such condition shall constitute misconduct as defined by New York State Education Law §6530(29)(McKinney Supp 1998).

I agree that in the event I am charged with professional misconduct in the future, this Consent Order and the attached Exhibits shall be admitted into evidence in that proceeding.

I hereby make this Application to the State Board for Professional Medical Conduct (the Board) and request that it be granted.

I understand that if I practice medicine in violation of the terms of this Consent Order, including but not limited to providing any patient care during the suspension period, that my conduct may constitute a criminal offense, including but not limited to the unlicensed practice of medicine, which is a felony.

I understand that, in the event that this Application is not granted by the Board, nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged or charged against me, such Application shall not be used against me in any way and shall be kept in strict confidence during the pendency of the professional misconduct disciplinary proceeding; and such denial by the Board shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by the Board pursuant to the provisions of the Public Health Law.

I agree that, in the event the Board grants my Application, as set forth herein, an order of the Chairperson of the Board shall be issued in accordance with this Application, said Order to supersede the Temporary Surrender pursuant to N.Y. Public Health Law §230(13) into which I entered in or about January 24, 1994.

I am making this Application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner. In consideration of the value to me of the acceptance by the Board of this Application, allowing me to resolve this matter without the various risks and burdens of further proceedings on the merits, I knowingly waive any right I may have to contest the Consent Order for which I hereby apply, whether administratively or judicially, and ask that the Application be granted.


ABAYOMI ORAFIYA, M.D.
RESPONDENT

Sworn to before me this

15th day of July, 1998.


NOTARY PUBLIC

SHARIF MAHDAVIAN
Notary Public, State of New York
No. 0214A5024000
Qualified in New York County
Commission Expires 14/2000

The undersigned agree to the attached application of the Respondent and to the proposed penalty based on the terms and conditions thereof.

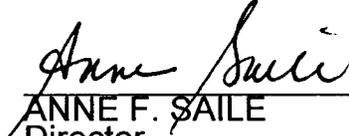
DATE: 7/15/98


SHARIF MAHDAVIAN, ESQ.
WILFRED T. FRIEDMAN, ESQ.
Attorneys for Respondent

DATE: July 17, 1998


CINDY M. FASCIA
Associate Counsel
Bureau of Professional
Medical Conduct

DATE: July 21, 1998


ANNE F. SAILE
Director
Office of Professional
Medical Conduct

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
ABAYOMI ORAFIDIYA, M.D.

CONSENT
ORDER

Upon the proposed agreement of ABAYOMI ORAFIDIYA, M.D.,
(Respondent) for Consent Order, which application is made a part hereof, it is
agreed to and

ORDERED, that the application and the provisions thereof are hereby
adopted and so ORDERED, and it is further

ORDERED, that this order shall be effective upon issuance by the Board,
which may be accomplished by mailing, by first class mail, a copy of the Consent
Order to Respondent at the address set forth in this agreement or to
Respondent's attorney by certified mail, or upon transmission via facsimile to
Respondent or Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: July 23, 1998



PATRICK F. CARONE, M.D., M.P.H.
Chairperson
State Board for Professional
Medical Conduct

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

-----X

IN THE MATTER : STATEMENT
OF : OF
ABAYOMI ORAFIDIYA, M.D. : CHARGES

-----X

ABAYOMI ORAFIDIYA, M.D., the Respondent, was authorized to practice medicine in New York State on October 22, 1984 by the issuance of license number 160583 by the New York State Education Department. Respondent is currently registered with the New York State Education Department to practice medicine through December 31, 1998, with a registration address of 4 Rella Drive, New City, New York 10956.

FACTUAL ALLEGATIONS

- A. Respondent, on or about January 24, 1994, temporarily surrendered his license to practice medicine in New York State. Respondent, pursuant to a Restoration Order dated December 16, 1994, had his medical license restored subject to conditions set forth in said Order. Said conditions, unless otherwise specified in the Order, remain in effect for a period of probation lasting five (5) years from the effective date of the Order.
1. Respondent, pursuant to the Restoration Order, must be supervised in his medical practice by a licensed

physician [Supervisor] approved by the Office of Professional Medical Conduct [hereinafter OPMC]. Respondent is further required to obtain a successor Supervisor subject to the approval of OPMC within seven days of becoming aware that the original supervising physician will no longer serve in that capacity. Respondent has failed to comply with the required supervision in violation of the Restoration Order, in that:

a) Respondent, at various times during the period of probation, practiced medicine without an approved Supervisor, and/or when he had not timely obtained a successor Supervisor after his Supervisor could no longer serve in that capacity.

2. Respondent, pursuant to the Restoration Order, must remain drug free from mood altering substances other than those prescribed for his treatment by a licensed physician aware of his history. Respondent is also not permitted to self-prescribe any medications. Respondent has failed to comply, in that:

a) Respondent tested positive for morphine pursuant to a urine specimen collected on or about May 20, 1997.

b) Respondent tested positive for opiates pursuant to

a urine specimen collected on or about June 2, 1998.

c) Respondent, on various occasions, including but not limited to, on or about August 12, 1997 and/or October 6, 1997 and/or October 14, 1997 and/or February 5, 1998, submitted urine specimens which had abnormally low creatinine and/or specific gravity levels.

3. Respondent, pursuant to the Restoration Order, must not engage in the solo practice of medicine for a period of two years, after which period of time he may petition OPMC for reconsideration of this restriction. Respondent has failed to comply, in that:

a. Respondent, as of approximately March 20, 1995, was engaging in the solo practice of medicine at 9 Ingalls Street, Nyack, New York.

B. Respondent, on or about June 14, 1998, at St. Agnes Hospital, White Plains, New York [hereinafter "St. Agnes Hospital"] was employed as the per-diem in-house Pediatrician on call at said facility.

1. Respondent, during the time period that he was on call and required to provide coverage, left the premises of St. Agnes Hospital, when he was required to remain on site.

2. Respondent, during the time period that he was on call and required to provide coverage, failed to respond in a timely manner to beeper and/or pager messages and/or failed to timely attend to a newborn infant, Patient A. (Patients are identified in Appendix.)

3. Respondent, during the time period that he was on call and required to provide coverage, left the premises of St. Agnes Hospital without providing reasonable notice of his absence and/or under circumstances which seriously impaired the delivery of professional care to patients.

C. Respondent, subsequent to May 11, 1998, met with the Director of Pediatrics at St. Agnes Hospital, who also served as Respondent's practice monitor at St. Agnes Hospital.

1. Respondent told the Director of Pediatrics that Dr. Rifkinson, the neurosurgical attending on or about May 11, 1998, told Respondent that Patient B could tolerate p.o. intake and did not need to have her I.V. restarted, when in fact Dr. Rifkinson did not tell Respondent this, and Respondent knew such facts.

SPECIFICATION OF CHARGES

FIRST THROUGH THIRD SPECIFICATIONS

VIOLATING A TERM OF PROBATION, CONDITION OR LIMITATION

Respondent is charged with professional misconduct by reason of violating a term of probation or a condition or limitation imposed on him pursuant to section two hundred thirty of the public health law, in violation of New York Education Law §6530(29) (McKinney Supp. 1997), in that Petitioner charges:

1. The facts in Paragraphs A and A.1(a).
2. The facts in Paragraphs A and A.2(a) and/or A.2(b), and/or A.2(c).
3. The facts in Paragraphs A and A.3(a).

FOURTH SPECIFICATION

ABANDONING OR NEGLECTING A PATIENT OR

ABANDONING A PROFESSIONAL EMPLOYMENT

Respondent is charged with professional misconduct by reason of his abandoning or neglecting a patient under and in need of immediate professional care without making reasonable arrangements for the continuation of such care, or abandoning a professional employment by a group practice, hospital, clinic or other health care facility, without reasonable notice and under circumstances which seriously impair the delivery of professional care to patients in violation of New York Education Law §6530(30), in that Petitioner charges:

4. The facts in Paragraphs B and B.1 and/or B.2 and/or B.3.

FIFTH SPECIFICATION

GROSS NEGLIGENCE

Respondent is charged with professional misconduct by reason of his practicing the profession with gross negligence on a particular occasion in violation of New York Education Law §6530(4), in that Petitioner charges:

5. The facts in Paragraphs B and B.1 and/or B.2.

SIXTH SPECIFICATION

FRAUDULENT PRACTICE

Respondent is charged with professional misconduct by reason of his practicing medicine fraudulently, in that Petitioner charges:

6. The facts in Paragraphs D and D.1.

DATED: *June 26*, 1998
Albany, New York

Peter D. Van Buren
PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional
Medical Conduct

EXHIBIT B

1. I request, agree, and understand that the suspension of my license shall be terminated only upon a showing to the satisfaction of a Committee on Professional Conduct of the State Board for Professional Medical Conduct (henceforth "Committee") that I have successfully complied with or completed a course of treatment for chemical dependency and ongoing evaluation, which successful compliance or completion must include a determination by said Committee that I am no longer incapacitated for the active practice of medicine and that I am both fit and clinically competent to practice medicine. I shall provide to the Office of Professional Medical Conduct a proposed treatment plan, for advice as to whether it is generally appropriate, but I understand that the determination of successful compliance with or completion of the course of therapy shall be made solely by the Committee, and shall include, but not be limited to, a determination that I am no longer incapacitated for the active practice of medicine.

2. I request, agree, and understand that upon my request, a meeting of a Committee shall be convened for the purpose of my making the showing referred to in paragraph 1. The Board will make reasonable attempts to convene a Committee not later than 90 days after my request, which shall not be deemed to have been perfected until receipt, by the Director of the Office of Professional Medical Conduct, of all that is required to be provided by me pursuant to the Conditions imposed upon me and pursuant to paragraph 3 below. I understand and agree that the procedural nature of said proceeding shall be determined by the State Board for Professional Medical Conduct through the discretion of the Director of the Office of Professional Medical Conduct upon consultation with Counsel, Bureau of Professional Medical Conduct. I understand and agree that proceedings before said Committee shall *not* be in the nature of a *hearing* pursuant to New York Public Health Law §230, but shall, instead, be informal and intended only for the purpose of addressing any and all facts, evidence, information, circumstances, or issues which do or may relate to the advisability of terminating the suspension of my license. The Committee shall be given access to evidence including but not limited to:

- a. Any and all evidence pertaining to Respondent's compliance with the Conditions imposed.

- b. Any evidence which the Director of the Office of Professional Medical Conduct or Counsel, Bureau of Professional Medical Conduct deems appropriate.

3. I request, agree, and understand that at the time that I request that a meeting of a Committee be scheduled, pursuant to paragraph 2, I will provide the Director of the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299, with the following:

- a. The signed acknowledgement from the supervising physician referred to in paragraph 5c.
- b. The signed acknowledgement from the health care professional referred to in paragraph 5d.
- c. Certified true and complete copies of records of all evaluation and treatment, relating to my impairment, whether that evaluation and treatment occurred prior to or during the time this surrender is in effect. These records shall include documentation of the results of all urine/blood/breath tests conducted to detect the presence of drugs and/or alcohol.
- d. Fully executed waivers of patient confidentiality concerning any previous and prospective treatment records.
- e. Upon request of the Director of OPMC, a current in-depth chemical dependency evaluation by a health care professional, approved in advance and in writing by the Director.
- f. Upon request of the Director of OPMC, a report of a complete clinical competency assessment, performed by a program for such assessment, such program to be proposed by Respondent and subject to the prior written approval of the Director.
- g. My attendance at, participation in, and cooperation with an

interview conducted by personnel of OPMC, upon the request of the Director thereof.

Provision of the aforesaid documents does not constitute a showing that I am no longer incapacitated for the active practice of medicine.

4. At the proceeding referred to in paragraph 2, I will provide the committee, at a minimum, with the following:

- a. Certified true and complete records of all rehabilitation, treatment, evaluation, and/or testing, whether in an out-patient, in-patient, office, or consultation setting.
- b. Evidence of compliance with the terms of a continuing after-care out-patient treatment plan that addresses the major problems associated with my illness.
- c. Evidence that I have maintained adequate knowledge and competence to practice as a physician. Such evidence shall include documentation of continuing medical education and, if so requested by the Director of OPMC, a report of an independent evaluation of my medical knowledge and competence.

Submission of the aforesaid evidence does not constitute a showing that I am no longer incapacitated for the active practice of medicine.

5. I request, agree, and understand that if the Chairperson of the Committee issues an order (Order) finding that I have successfully completed the prescribed course of treatment, and staying the suspension of my license, the Order shall further impose a period of probation, pursuant to New York Public Health Law §230-a, during which my practice of medicine shall be subject to conditions imposed. My practice shall be subject to such conditions for a period of no less than five years. The minimum conditions shall include:

- a. I will remain drug and alcohol free.

- b. My sobriety will be monitored by a health care professional, proposed by me and approved in writing by the Director of OPMC, in accordance with the conditions of restoration set forth in or annexed to the Order. Said monitor shall acknowledge his/her willingness to comply with the monitoring by executing the acknowledgement provided by OPMC.
 - i. Said monitor shall be familiar with my history of substance abuse, with this Consent Order,, and with the conditions of practice set forth in or annexed to the Order. Said monitor shall not be my treating physician.
 - ii. Said monitor shall see me at least twice during a quarter.
 - iii. Said monitor shall direct me to submit to unannounced tests of my blood, breath, and/or urine for the presence of drugs or alcohol and shall report to OPMC within 24 hours if at any time such a test is refused by me or is positive.
 - iv. Said monitor shall report to OPMC any noncompliance with the imposed conditions.
 - v. Said monitor shall not be a personal friend.
 - vi. Said monitor shall submit to OPMC quarterly reports either certifying my compliance, or detailing my failure to comply, with each of the conditions imposed. The reports shall include the results of all body fluid and/or breath tests for drugs and/or alcohol performed during that quarter.

- c. I shall be required to comply with the terms of a continuing after-care treatment plan that addresses the major problems associated with my illness.

- d. At the direction of the Director of OPMC, I will submit to periodic interviews with, and evaluations by, a board certified psychiatrist or other licensed health care practitioner designated by the Director. Said practitioner shall report to the Director regarding my condition and my fitness or incapacity to practice medicine.

- e. I will be supervised in my medical practice by a licensed physician, proposed by me and approved in writing by the Director of OPMC, in accordance with the conditions contained in or annexed to the Order. Said supervising physician shall be familiar with my illness and with the Order and its conditions. Said supervising physician shall supervise my compliance with the conditions of practice imposed by the Order. Said supervising physician shall be in a position regularly to observe and assess my medical practice. Said supervising physician shall acknowledge his/her willingness to comply with the supervision by executing the acknowledgement provided by OPMC.
 - i. Said supervising physician shall submit to OPMC quarterly reports regarding the quality of my medical practice, any unexplained absences from work and certifying my compliance or detailing my failure to comply with each condition imposed.

 - ii. Said supervising physician shall report any suspected impairment, inappropriate behavior, questionable medical practices or possible misconduct to OPMC.

- f. I will continue in treatment with a health care professional, proposed by me and approved, in writing, by the Director of OPMC, for as long as the health care professional determines it is necessary.
 - i. My treating health care professional or

program shall submit to OPMC quarterly reports certifying that I am complying with the treatment.

- ii. Said treating health care professional shall report to OPMC immediately if I am noncompliant with my treatment plan or if I demonstrate any significant pattern of absences.
- iii. Said treating health care professional shall acknowledge his/her willingness to comply with the above-mentioned reporting by executing the acknowledgement provided by OPMC.

6. I agree that the terms set out in paragraph 5 shall be the minimum probation terms, related to my fitness to practice, to be imposed on my practice upon restoration of my license, and that other terms may be added by the Committee at the time of license restoration, and that the costs of complying with all such terms will be my responsibility. I understand that any failure by me to comply with the conditions imposed upon my practice at the time of license restoration, may result in disciplinary action being brought against me charging professional misconduct as defined by the New York State Education Law, including but not limited to N.Y. Educ. Law Section 6530(29) (McKinney Supp. 1998). That section defines professional misconduct to include "violating any... condition... imposed on the licensee pursuant to section two hundred thirty of the public health law."

7. I agree that upon any denial of license restoration made by the Committee, I shall not again request convening of a Committee until a minimum period of nine months has elapsed since such denial.

8. I agree that in addition to the terms set out in paragraph 5 and any other terms imposed by added by the Committee upon restoration of my license, I shall also be subject to the following standard terms of probation:

- a. I shall conduct myself in all ways in a manner befitting my professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by my profession.
- b. I shall submit written notification to the New York State Department of Health addressed to the Director of the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
- c. I shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. I shall personally meet with a person designated by the Director of OPMC as requested by the Director.
- d. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is not limited to the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
- e. The period of probation shall be tolled during periods in which I am not engaged in the active practice of medicine in New York State. I shall notify the Director of OPMC, in writing, if I am not currently engaged in or intend to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York

State. The tolling provision set forth in this paragraph may be waived by the Director of the OPMC, in the Director's discretion.

- f. My professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with me and my staff at practice locations or OPMC offices.
- g. I shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.
- h. I shall comply with all terms, conditions, restrictions, limitations and penalties to which I am subject pursuant to the Order and I shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against me as may be authorized pursuant to the law.



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

June 30, 1998

Mr. Robert Bentley, Director
Division of Professional Licensing Services
New York State Education Department
Cultural Education Center
Empire State Plaza
Albany, NY 12230

RE: Abayomi Orafidiya, M.D.
NYS License No. 160583

Dear Mr. Bentley:

Enclosed is a copy of a Commissioner's Order and Notice of Hearing which summarily suspends Dr. Orafidiya's right to practice medicine in the State of New York. This Order was served on Dr. Orafidiya on June 29, 1998, and is in effect for 90 days from the date of service.

Sincerely,

A handwritten signature in cursive script that reads 'Anne Saile'.

Anne F. Saile
Director
Office of Professional Medical Conduct

Enclosure

cc: Daniel Kelleher

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

-----X

IN THE MATTER : COMMISSIONER'S
OF : ORDER AND
ABAYOMI ORAFIDIYA, M.D. : NOTICE OF HEARING

-----X

TO: Abayomi Orafidiya, M.D.
160 North Midland Avenue
Nyack, New York 10960

The undersigned, Barbara A. DeBuono, M.D., M.P.H., as Commissioner of the New York State Department of Health, after an investigation, upon the recommendation of a committee on professional medical conduct of the State Board for Professional Medical Conduct has determined that the continued practice of medicine in the State of New York by Abayomi Orafidiya, M.D., the Respondent, constitutes an imminent danger to the health of the people of this state.

It is therefore:

ORDERED, pursuant to N.Y. Pub. Health Law Section 230(12), that effective immediately Abayomi Orafidiya, M.D., Respondent, shall not practice medicine in the State of New York. This Order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to N.Y. Pub. Health Law Section 230(12).

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230, and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The hearing

will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on the day of _____, 1998 at _____ and at such other adjourned dates, times and places as the committee may direct. The Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. The Respondent shall appear in person at the hearing and may be represented by counsel. The Respondent has the right to produce witnesses and evidence on his behalf, to issue or have subpoenas issued on his behalf for the production of witnesses and documents and to cross-examine witnesses and examine evidence produced against him. A summary of the Department of Health Hearing Rules is enclosed. Pursuant to Section 301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

The hearing will proceed whether or not the Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and, therefore, adjournment requests are not routinely granted. Requests for adjournments must be made in writing to the Administrative Law Judge's Office, Hedley Park Place, 433 River Street, 5th Floor, Troy, New York 12180 (518-402-0751), upon notice to the attorney for the Department of

Health whose name appears below, and at least five days prior to the scheduled hearing date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty or sanction to be imposed or appropriate action to be taken. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A
DETERMINATION THAT YOUR LICENSE TO PRACTICE
MEDICINE IN NEW YORK STATE BE REVOKED OR
SUSPENDED, AND/OR THAT YOU BE FINED OR
SUBJECT TO OTHER SANCTIONS SET FORTH IN NEW
YORK PUBLIC HEALTH LAW SECTION 230-a. YOU
ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT
YOU IN THIS MATTER.

DATED: Albany, New York

26 June, 1998


BARBARA A. DeBUONO, MD, MPH
Commissioner of Health

Inquiries should be directed to:

Cindy M. Fascia
Associate Counsel
NYS Department of Health
Division of Legal Affairs
Corning Tower Building
Room 2509
Empire State Plaza
Albany, New York 12237-0032
(518) 473-4282

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

-----X

IN THE MATTER : STATEMENT
OF : OF
ABAYOMI ORAFIDIYA, M.D. : CHARGES

-----X

ABAYOMI ORAFIDIYA, M.D., the Respondent, was authorized to practice medicine in New York State on October 22, 1984 by the issuance of license number 160583 by the New York State Education Department. Respondent is currently registered with the New York State Education Department to practice medicine through December 31, 1998, with a registration address of 4 Rella Drive, New City, New York 10956.

FACTUAL ALLEGATIONS

- A. Respondent, on or about January 24, 1994, temporarily surrendered his license to practice medicine in New York State. Respondent, pursuant to a Restoration Order dated December 16, 1994, had his medical license restored subject to conditions set forth in said Order. Said conditions, unless otherwise specified in the Order, remain in effect for a period of probation lasting five (5) years from the effective date of the Order.
 - 1. Respondent, pursuant to the Restoration Order, must be supervised in his medical practice by a licensed

physician [Supervisor] approved by the Office of Professional Medical Conduct [hereinafter OPMC]. Respondent is further required to obtain a successor Supervisor subject to the approval of OPMC within seven days of becoming aware that the original supervising physician will no longer serve in that capacity. Respondent has failed to comply with the required supervision in violation of the Restoration Order, in that:

- a) Respondent, at various times during the period of probation, practiced medicine without an approved Supervisor, and/or when he had not timely obtained a successor Supervisor after his Supervisor could no longer serve in that capacity.
2. Respondent, pursuant to the Restoration Order, must remain drug free from mood altering substances other than those prescribed for his treatment by a licensed physician aware of his history. Respondent is also not permitted to self-prescribe any medications. Respondent has failed to comply, in that:
- a) Respondent tested positive for morphine pursuant to a urine specimen collected on or about May 20, 1997.
 - b) Respondent tested positive for opiates pursuant to

a urine specimen collected on or about June 2, 1998.

c) Respondent, on various occasions, including but not limited to, on or about August 12, 1997 and/or October 6, 1997 and/or October 14, 1997 and/or February 5, 1998, submitted urine specimens which had abnormally low creatinine and/or specific gravity levels.

3. Respondent, pursuant to the Restoration Order, must not engage in the solo practice of medicine for a period of two years, after which period of time he may petition OPMC for reconsideration of this restriction.

Respondent has failed to comply, in that:

a. Respondent, as of approximately March 20, 1995, was engaging in the solo practice of medicine at 9 Ingalls Street, Nyack, New York.

B. Respondent, on or about June 14, 1998, at St. Agnes Hospital, White Plains, New York [hereinafter "St. Agnes Hospital"] was employed as the per-diem in-house Pediatrician on call at said facility.

1. Respondent, during the time period that he was on call and required to provide coverage, left the premises of St. Agnes Hospital, when he was required to remain on site.

2. Respondent, during the time period that he was on call and required to provide coverage, failed to respond in a timely manner to beeper and/or pager messages and/or failed to timely attend to a newborn infant, Patient A. (Patients are identified in Appendix.)
 3. Respondent, during the time period that he was on call and required to provide coverage, left the premises of St. Agnes Hospital without providing reasonable notice of his absence and/or under circumstances which seriously impaired the delivery of professional care to patients.
- C. Respondent, subsequent to May 11, 1998, met with the Director of Pediatrics at St. Agnes Hospital, who also served as Respondent's practice monitor at St. Agnes Hospital.
1. Respondent told the Director of Pediatrics that Dr. Rifkinson, the neurosurgical attending on or about May 11, 1998, told Respondent that Patient B could tolerate p.o. intake and did not need to have her I.V. restarted, when in fact Dr. Rifkinson did not tell Respondent this, and Respondent knew such facts.

SPECIFICATION OF CHARGESFIRST THROUGH THIRD SPECIFICATIONS

VIOLATING A TERM OF PROBATION, CONDITION OR LIMITATION

Respondent is charged with professional misconduct by reason of violating a term of probation or a condition or limitation imposed on him pursuant to section two hundred thirty of the public health law, in violation of New York Education Law §6530(29) (McKinney Supp. 1997), in that Petitioner charges:

1. The facts in Paragraphs A and A.1(a).
2. The facts in Paragraphs A and A.2(a) and/or A.2(b), and/or A.2(c).
3. The facts in Paragraphs A and A.3(a).

FOURTH SPECIFICATION

ABANDONING OR NEGLECTING A PATIENT OR

ABANDONING A PROFESSIONAL EMPLOYMENT

Respondent is charged with professional misconduct by reason of his abandoning or neglecting a patient under and in need of immediate professional care without making reasonable arrangements for the continuation of such care, or abandoning a professional employment by a group practice, hospital, clinic or other health care facility, without reasonable notice and under circumstances which seriously impair the delivery of professional care to patients in violation of New York Education Law §6530(30), in that Petitioner charges:

4. The facts in Paragraphs B and B.1 and/or B.2 and/or B.3.

FIFTH SPECIFICATION

GROSS NEGLIGENCE

Respondent is charged with professional misconduct by reason of his practicing the profession with gross negligence on a particular occasion in violation of New York Education Law §6530(4), in that Petitioner charges:

5. The facts in Paragraphs B and B.1 and/or B.2.

SIXTH SPECIFICATION

FRAUDULENT PRACTICE

Respondent is charged with professional misconduct by reason of his practicing medicine fraudulently, in that Petitioner charges:

6. The facts in Paragraphs D and D.1.

DATED: *June 26*, 1998
Albany, New York

Peter D. Van Buren
PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional
Medical Conduct